

Jeffery Harris
16 Yuma Trail
Bisbee, AZ 85603
(520) 432-2757
Petitioner-Plaintiff in Pro Per

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE**

JEFFERY HARRIS,

Petitioner-Plaintiff,

vs.

**THE CITY OF BISBEE, ARIZONA;
MAYOR, DAVID M. SMITH; and
MEMBERS OF COUNCIL, ANNA
CLINE, JONI GIACOMINO, JOAN
HANSEN, BILL HIGGINS, LESLIE
JOHNS, and GABE LINDSTROM;**

Respondents-Defendants.

Case No.: CV201900052

**MOTION TO STRIKE NOTICE OF
APPEARANCE OF RESPONDENTS'
PURPORTED LEGAL COUNSEL, and
MOTION TO STRIKE PURPORTED
RESPONDENTS' MOTION TO DISMISS**

Assigned to: the Hon. Laura Cardinal

On February 27, 2019, Marshall Humphrey, III, Esq. filed a Notice of Appearance before this Court purporting to represent the City of Bisbee, Arizona and the seven members of the Bisbee City Council in their official capacity. As far as can be determined, Marshall Humphrey, III, Esq. lacks the standing to appear in this matter: he has neither been authorized to represent the Respondents in a manner consistent with Arizona law nor has he filed an application with this Court for leave to intervene pursuant to Rule 24 of the Rules of Civil Procedure for the Superior Courts of Arizona.

The above-named Petitioner hereby moves this Court for an Order striking the Notice of Appearance filed by Marshall Humphrey, III, Esq. on February 27, 2019, and striking all unauthorized pleadings and other papers filed by him in this matter.

1 In addition, pursuant to Rule 12(f) of the Rules of Civil Procedure for the Superior Courts
2 of Arizona, the Petitioner hereby moves this Court for an Order striking what purports to be
3 Respondents' Motion to Dismiss, for the reason that it is entirely devoid of argument material to
4 the instant Special Action.

5 **I. HUMPHREY'S NOTICE OF APPEARANCE SHOULD BE STRICKEN**

6 Arizona open meeting laws severely restrict a public body's ability to conduct its affairs
7 behind closed doors. Consistent with Arizona's public policy in this regard, A.R.S. § 38-
8 431.03(D) explicitly requires the following:
9

10 A public vote shall be taken before any legal action binds the public body.
11
12 Therefore, pursuant to § 38-431.03(D), even an attorney retained by a public body must first
13 obtain specific authorization through a public vote of that body to proceed before he binds that
14 body in litigation in which that public body is a party.

15 Despite the requirements of § 38-431.03(D), at no time did the City of Bisbee, through its
16 City Council, hold a public vote that might somehow authorize Marshall Humphrey, III, Esq. or
17 any other attorney to represent it in the instant matter.¹ As a result of the City's inaction,
18 therefore, neither Marshall Humphrey, III, Esq. nor any other attorney has been authorized to
19 represent the City of Bisbee and its Council as Respondents in the instant matter in a manner that
20 is consistent with Arizona law. Precisely because Marshall Humphrey, III, Esq. has no standing
21

22 ¹ Perhaps worthy of note is that on the heels of the opinion (adverse to the City) issued by the
23 Arizona Court of Appeals, in *Harris v. City of Bisbee*, 192 P.3d 162 (Ariz.App. 2008), the
24 Bisbee City Attorney at that time requested authorization at an public council session to file a
25 Petition for Review to the Arizona Supreme Court on the City's behalf. Although that city
attorney urged the Bisbee City Council to give him such authorization if only because the
proposed continuation of litigation would come at no additional cost to the City, the City
Council, *through a public vote*, denied its city attorney the authorization to proceed.

1 in this matter, the Notice of Appearance that he filed on February 27, 2019, as well as any
2 unauthorized pleadings or other papers filed in this matter, should be stricken.

3 **II. THE MOTION TO DISMISS IS DEVOID OF MATERIAL ARGUMENT AND**
4 **SHOULD THEREFORE BE STRICKEN**

5 The purported Respondents' Motion to Dismiss is grounded in its entirety on an issue of
6 standing immaterial to the instant Special Action and outside this Court's jurisdiction. Rather
7 than present argument material to the instant Special Action, the Motion to Dismiss has instead
8 based its argument solely on an issue of standing raised below that has not yet been decided
9 finally at the administrative level and thus is not yet ripe for consideration by this Court.²

10 The argument presented in the Motion to Dismiss could easily be divided into two parts,
11 neither of which addresses an issue material to the instant Special Action. The initial portion is
12 little more than a re-hash of the argument employed by the (now former) Bisbee City Manager as
13 his basis for denying the protest filed by Harris (and Pulling) administratively.³ In that the issues
14 presented therein have not yet been decided finally at the administrative level, no aspect of this
15 recycled argument is material to the instant matter. The final portion of the argument presented
16 consists of a bizarre straw-man attack on the applicability of the authority relied on by Harris in
17 his Special Action Complaint. Without showing how a protester's standing as an "interested
18 party" below might conceivably be material to the instant Special Action, the second portion of
19

20 ² Ironically, it was the failure of the Bisbee City Council to perform its duty to hear an appeal
21 turning largely on the issue of standing below that left Harris no avenue to exhaust his
22 administrative remedies save one. The only adequate means Harris had available to him to
23 overcome the Council's unyielding refusal to hear his appeal (so that the issue of a protester's
24 standing could be decided finally at the administrative level) was to bring a special action
25 seeking an Order from this Court compelling the Council to perform a duty required by Bisbee
City Code § 3.5.20 as to which it has no discretion.

³ Curiously, although the City Manager's argument was subsequently rebutted below in Harris' (disregarded) brief on appeal to Council, such rebuttal has been overlooked or ignored entirely in the instant Motion to Dismiss.

1 the Motion to Dismiss elaborates, albeit misleadingly, on how “[none] of the cases cited by Mr.
2 Harris in his Special Action Complaint support his reading of ‘interested party’ ...” and how
3 “*Automatic R.M. Co.* does not apply here, as the issue of standing was never addressed.”
4 Conveniently glossed over in this sly straw-man attack is that Harris, *in his Special Action*
5 *Complaint*, did not rebut a second time the City Manager’s contention that, under Bisbee City
6 Code, a protester allegedly has no standing as an “interested party” (as Harris had below in his
7 disregarded brief on appeal to Council). Notwithstanding any cunning suggestion to the contrary,
8 Harris’ citations to authority in his Special Action Complaint were provided, not to rebut (for a
9 second time) issues that have yet to be resolved below, but rather to support the sole question
10 material to the instant Special Action: whether Council failed to perform a duty required by law
11 as to which it has no discretion?

12 In that the Motion to Dismiss is devoid of argument material to the instant Special
13 Action, it should be stricken.

14 **CONCLUSION**

15 For the foregoing reasons, Petitioner moves this Court for an Order striking the Notice of
16 Appearance filed by Marshall Humphrey, III, Esq. on February 27, 2019 as improper, and
17 striking all unauthorized pleadings and other papers filed by him in this matter; and for an Order
18 striking what purports to be Respondents’ Motion to Dismiss, for the reason that the pleading is
19 entirely devoid of argument material to the instant Special Action.
20

21 DATED this 8th day of April, 2019.

22 /s/ Jeffery Harris
23 Jeffery Harris
24
25

1 Original of the foregoing transmitted electronically on this
2 8th day of April, 2019 to:

3 Clerk of the Court
4 Cochise County Superior Court
5 100 Quality Hill
6 Bisbee, Arizona 85603

7 By mutual agreement, copy of the foregoing was
8 electronically transmitted on this same day to:

9 Marshall Humphrey, III, Esq.
10 mhumphrey@humphreyandpetersen.com
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